IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 709 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K M VERMA

Versus

BHARATKUMAR V GONDIA

Appearance:

1. Special Civil Application No. 709 of 1987

MR BB NAYAK FOR MR MR BHATT for Petitioners No. 1-2

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1 The Assistant Director of Inspection (Investigation), Rajkot, was constrained to file the petition in this Court against the order made by the 2nd.Jt.Civil Judge (S.D) Jamnagar in Special Civil Suit No. 4 of 1987 filed by one Bharatkumar V.Gondia against the Union of India, Assistant Director of Inspection, Rajkot and several other defendants on 5/1/1987. The Court issued notice as to why the application for ad-interim injunction should not be granted under Order 39 Rule 1-2 read with Section 151 of the Code of Civil Procedure. It is against filing of the suit the petitioner has lodged this petition. On 8/10/1989 the Division Bench issued Rule which was made returnable in November,1990. The Court further directed that the petition be heard with Special Civil Application Nos. 6213 of 1986 and 6214 of 1986. The Division Bench also granted ad-interim relief in terms of paragraph 18(f). No reply has been filed by the respondent though served.

2 We are not required to narrate the facts of the case as the Larger Bench of this Court in Special Civil Application No.6213 of 1986 with Special Civil Application No. 6214 of 1986 on 28/10/2000 has held that the suit is not maintainable. A copy of the judgment is placed before this Court. The Larger Bench in paragraph 22 has held :

"It is, therefore, clear that in the facts of the present case also the suits were clearly barred by the provisions of Sec.293 of the Income Tax Act and the Civil Court had no jurisdiction to entertain the suit against the proceedings for search and seizure, which were being taken under Sec.132 of the Income Tax Act,1961 read with Rule 112(1) of the Income Tax Rules,1962".

3 Had the matter been placed before the Bench hearing Special Civil Application, the matter could have been disposed of along with those applications. However, it seems that the matter could not be listed and therefore could not be disposed of. Under the circumstances, it is placed before this Bench. In view of the decision of the Larger Bench, we are required to state that the suit filed was not maintainable and therefore the petition is required to be allowed. The suit stands dismissed. Rule made absolute accordingly with no order as to costs.

Sd/- Sd/-

(B.C.Patel,J) (D.A.Mehta,J)

m.m.bhatt